

FEB 28 1991

5H-12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Dennis Reis
Sidley & Austin
One First National Plaza
Chicago, IL 60603

Dear Mr. Reis:

U.S. EPA is in receipt of your correspondence of February 11, 1991, regarding the work that NL Industries, Inc., Johnson Controls, Inc., Allied-Signal, Inc., and Exide Corporation (the Respondents) are willing to perform under the November 27, 1991 Unilateral Order (the Order) issued by U.S. EPA. In this letter, these entities failed to express an unequivocal intent to comply with all of the work identified by the Order therefore U.S. EPA continues to consider the above referenced entities out of compliance with the Order.

Section I, paragraph one (1) of the Order requires the Respondents to perform both the remedial design and remedial action for the remedy described in the March 30, 1990 Record of Decision. Paragraph 30 of the Order states, in part:

On or before the effective date of this Order, each Respondent must submit to EPA's RPM written notice stating its unequivocal intention to comply with the terms of this Order. In the event any Respondent fails to provide such written notice, that Respondent shall be deemed to have failed to comply with this Order. (emphasis supplied)

The February 11, 1991 correspondence does not fulfill the terms of paragraph 30. The correspondence suggests additional discussions are appropriate before the Respondents will clean residential soils contaminated with lead concentrations between 500-1000 parts per million of lead. The failure of the Respondents to agree to clean these areas represents a failure to comply with a substantial portion of the Order. The February 11 letter expresses the belief that the Respondents and U.S. EPA can

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resolve these differences in a timely manner while design work begins. The outstanding issues, however, have already been the subject of extensive discussions between EPA and the Respondents, the formal written comments of the Respondents, and EPA's written response to those comments. A willingness to conduct the remedial design only while negotiating an alternate remedy or settlement conflicts with the plain language of paragraph 30, which requires the Respondents to provide written notice of their unequivocal intent to perform both the remedial design and remedial action.

U.S. EPA, at the request of various parties, agreed to extend the effective date of the Order from January 11, 1991, to January 18, 1991. The February 11, 1991, correspondence suggests that the Respondents of the Order may have additional time beyond January 18 to express their intent to comply with the Order. U.S. EPA has not authorized any additional extensions of the effective date of the Order. U.S. EPA has already communicated its position that the Respondents are in violation of the Order in a letter to you dated February 1, 1991. Enclosed for your convenience is a copy of that letter.

Sincerely,

David A. Ullrich, Director
Waste Management Division

Enclosure

bcc: Steve Siegel (5CS-TUB-3)
Brad Bradley (5HS-11)

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